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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re C.S. et al., Persons Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.S.,

Defendant and Appellant.

E050202

(Super.Ct.Nos. J217138, J217139,  
J217140 & J217141)

OPINION

APPEAL from the Superior Court of San Bernardino County. Marsha Slough,  
Judge. Affirmed.

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Ruth E. Stringer, County Counsel, and Kristina M. Robb, Deputy County Counsel,  
for Plaintiff and Respondent.

Appellant V.S. (mother) is the mother of C.S., Ch.S., J.S., and L.S. (the children). Her parental rights as to the children were terminated. On appeal, mother claims that the beneficial relationship exception applied. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)<sup>1</sup> We disagree and affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

On September 18, 2007, the San Bernardino County Children and Family Services (CFS) filed section 300 petitions on behalf of each child. J.S. was six years old at the time, L.S. was five years old, Ch.S. was four years old, and C.S. was one year old.<sup>2</sup> The petitions alleged that the children came within the provisions of section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), (g) (no provision for support), and (j) (abuse of sibling). The specific allegations included that the children's father (father)<sup>3</sup> struck L.S.'s arm with a belt, and also burned his arm with a cigarette lighter, leaving a red burn mark. The petitions further alleged that mother knew or should have known that father was striking all of the children and burning body parts of the children, but failed to protect them, and that mother and father had a history of domestic violence.

The detention report stated that J.S. said father hit him with his belt in the head and face and burned his finger with a cigarette lighter. J.S. said father did the same to his

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> The section 300 petitions also included a fifth child, three-month-old E.S. However, he passed away prior to the detention hearing; the juvenile court dismissed him from the petitions.

<sup>3</sup> Father is not a party to this appeal.

brother, L.S. Mother denied that father ever hit or burned the children or herself, and she repeatedly stated that she would not prevent father from spending time with the children.

The court detained the children on September 19, 2007. The court ordered weekly supervised visits with mother.

#### *Jurisdiction/Disposition*

The social worker filed a jurisdiction/disposition report on October 3, 2007, recommending reunification services for mother. The social worker reported that a forensic physical examination was conducted, during which L.S. confirmed that his father hit him and burned him with cigarettes, and that father hit mother. The doctor identified numerous abnormal injuries and marks on L.S.'s body, including cigarette and lighter burns, loop marks, scarred lips, and broken teeth. The doctor examined Ch.S. and identified multiple scars on his back, patterns consistent with contact burns and broken teeth.

The social worker and a sheriff's deputy interviewed mother. Mother stated that father did not live with her and the children, but only stayed there one or two days at a time. She said father had never hit the children, and also indicated she and father never fought. She claimed that there were marks on L.S.'s body from falling off the trampoline and his bike. She also claimed he was extremely clumsy and fell while he walked. She stated that the children lied and made up the stories about father and her.

The social worker interviewed Ch.S. privately. Ch.S. said father was at work, but he was not coming home because mother had called and told him not to come home since the social worker was coming over. Ch.S. insisted that father lived at their home every

day. As the police and the social worker were leaving, father drove up, and the police took him into custody.

In an addendum report filed on December 4, 2007, the social worker recommended no reunification services for either parent. Mother continued to deny there was any abuse to the children or between her and father. The social worker reported that the children were placed together in a licensed foster home.

A contested jurisdiction hearing was held on December 17, 2007. Mother submitted on the allegations in the petitions, as amended pursuant to an agreement with CFS. The court sustained the petitions as amended and found that the children came under section 300, subdivisions (a), (b), (g), and (j).

The social worker filed a second addendum report on February 1, 2008. Mother continued to deny that her children were ever beaten, burned, or hurt in any way, and stated that she never saw any injuries on them and did not understand why the children had been removed from her care. As to visitation, the social worker reported that mother had visited the children weekly since their detention.

A third addendum report was filed on April 22, 2008. The social worker continued to recommend no reunification services. The social worker reported that mother continued to have weekly supervised visits. The children were happy to see mother, and the visits went well.

A contested dispositional hearing took place, beginning on April 22, 2008. Mother testified at the hearing and said she now believes her children and had no doubts

that father abused them. Mother said that she bathed each child every day. She said she noticed marks on L.S., but thought they were insect bites.

At the conclusion of testimony and oral argument, the court recounted all the children's marks and injuries and then stated, "[G]iven the extent of the scars and the injuries to her kids and her own statement that she bathes these kids herself and saw no scars on them, I see no way that this mother did not know that her kids were being injured so severely and routinely by their father by this treatment . . . ." The court noted that mother had been participating in services and therapy since the children had been removed, and that she had made progress. Although the court still had concerns about mother's ability to protect the children from father, it ordered reunification services for mother. The court declared the children dependents of the court and ordered weekly supervised visitation.

#### *Status Reviews*

The social worker filed a status review report on September 5, 2008, recommending that mother receive six more months of reunification services since she was complying with her case plan requirements.<sup>4</sup> The social worker reported that mother had visited the children regularly, and that the visits were increased by 30 minutes. Her parenting skills had noticeably improved. On August 27, 2008, she was authorized to have a two-hour unsupervised visit.

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<sup>4</sup> The social worker's report is unclear because it listed May 6, 2008, as the date of the disposition order, as well as the six-month review. It listed September 12, 2008, as the date of the 12-month review hearing.

A 12-month review hearing was held on September 12, 2008, and the matter was continued for a contested hearing on October 17, 2008.

The parties participated in mediation on September 19, 2008. An agreement was reached whereby mother was to have unsupervised visitation for two and a half hours every Saturday, and then full day visits would commence when the social worker and mother's therapist deemed it appropriate. Overnight visits would occur when appropriate, with two children at a time, initially. Then, all four children would visit for a full weekend, when appropriate.

On October 7, 2008, mother withdrew her consent to the terms reached at mediation and requested that the children be returned to her under family maintenance.

A contested 12-month review hearing was held on October 17, 2008. The court ordered the reunification plan to remain in effect. The court also ordered a psychological evaluation of mother, and visitation to continue with weekly, unsupervised, two-hour visits. The social worker was authorized to liberalize visits to include overnight visits.

The social worker filed an 18-month status review report on March 4, 2009, recommending that reunification services be terminated and a section 366.26 hearing be set. The social worker recommended legal guardianship with the foster parents. The children were placed in their foster home in October 2007, and they had made an excellent adjustment to the home. They were all very attached to their foster parents. The social worker further reported that the visits increased to overnight visits in November 2008. The children reported that mother drove them around without a driver's license. She watched horror movies with the children, and allowed them to have contact

with adults who were not authorized by the court. One man had been accused of abusing the children and fondling mother in front of the children. Another male was living with mother, but declined to be live scanned. The children exhibited increased behavioral problems during the time of overnight visits, including defiance, night crying, biting, tearing holes in clothing, lying, and sexualized behavior. Because of these problems, the visits went back to being supervised. Thereafter, the children's unusual and extreme behavior dissipated.

In an addendum report filed on April 7, 2009, the social worker reported that the children began "wrap around services" on March 24, 2009.

On May 14, 2009, the court held a contested 18-month review hearing. The court terminated mother's reunification services and set a section 366.26 hearing. The court concluded it was in the best interest of the children to remain in the home of the foster parents and proceed with guardianship.

#### *Section 366.26*

In the section 366.26 report filed on September 3, 2009, the social worker stated that it was not likely that the children would be adopted at that time "as they have an ongoing relationship with their mother." Furthermore, the foster parents were not willing to adopt the children at that time, since they wanted the dependency to remain open in order for the "wrap around services" to continue. The social worker reported that mother had been having supervised visits since the May 14, 2009, hearing. According to the Arrowhead Foster Family Agency staff, the vast majority of the visits were "disasters." The children were disrespectful of mother and behaviorally out of control. Thus, the

social worker recommended that visitation should be decreased to one 2-hour, supervised visit each month. The social worker further reported that the children had made “phenomenal progress” in their foster home. The “wrap around” staff were very impressed with the foster parents’ parenting skills and willingness to work with the staff and the children.

The social worker filed an addendum report on September 28, 2009, recommending that the section 366.26 hearing be continued for 120 days in order to refer the case for an adoption home study. The foster parents now had a strong desire to adopt the children, and the children wanted to stay with them. Thus, the social worker changed the recommendation to adoption as the best plan for the children.

A hearing on visitation was held on October 30, 2009. Despite the social worker’s recommendation that the visits be reduced to once a month, the court ruled that visitation be twice a month.

A section 366.26 hearing was held on September 30, 2009, and the matter was set contested on behalf of mother. The matter was continued to December 29, 2009.

The social worker filed an adoption assessment report on December 11, 2009. The social worker spoke with each of the children about adoption. J.S. understood what adoption was and said he was ““really happy”” about living with his foster parents. C.S. had a fair understanding of adoption and stated that she wanted to live in her current foster home until she grew up. She called her foster parents ““mom and dad.”” Ch.S. said he liked living at his foster home. L.S. also said he liked living there. Both of those boys seemed reluctant to say they wanted to be adopted. The social worker



recommended that the children remain in their placement and be freed for adoption.

They were stable and comfortable in their placement, and the foster parents were happy to have them remain a part of their family. The foster parents were open to continued contact with mother, as long as it was not detrimental to the children.

The contested section 366.26 hearing was held on February 2, 2010. The foster mother testified that she wanted to adopt the children because they had been a part of her family for two and a half years, and she loved them very much. She further noted that the children's behavior had improved a lot since there was a change in the social worker who supervised the visits. Since the new social worker started supervising the visits, the children were calm and respectful. He helped mother with the children during visits, which enabled her to focus on one child at a time.

Social worker Kenneth Odom testified next. He was the social worker who initially recommended legal guardianship and then changed the recommendation to adoption. In regard to the change, he said the foster parents had indicated a willingness to adopt the children, and they were bonded with the children. He also said the children were in need of permanency.

The court held an in chambers conversation with J.S. and L.S. When the court asked J.S. how he felt about being adopted, he said, "Good." L.S. said, "Good. I don't really know if I want to be yet." They both said they wanted to continue visiting with their "real mother." They also said they were comfortable in their current placement, and that they loved their foster mother.

After speaking with J.S. and L.S., the court stated that it was clear that seeing mother was very important to them. The court also stated that they clearly had a very grounded and secure relationship with their foster parents. The court said it was in the children's best interest to go forward with the adoption and have an open adoption. The court acknowledged there was a bond with mother, but that it did not rise to the level indicating adoption would not be in the children's best interest. The court terminated parental rights and ordered adoption as the permanent plan.

### ANALYSIS

#### The Beneficial Parental Relationship Exception Did Not Apply

Mother contends that the court erred in not applying the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). We disagree.

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) If the court finds that a child may not be returned to his or her parents and is likely to be adopted, it must select adoption as the permanent plan, unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under one of the exceptions set forth in section 366.26, subdivision (c)(1)(B). One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i). (See *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206.) This exception applies when the parents "have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

(§ 366.26, subd. (c)(1)(B)(i).) The phrase “benefit from continuing the relationship” refers to a parent/child relationship that “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)) It is the parent’s burden to show that the beneficial parental relationship exception applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

In support of mother’s position, she claims that the bond between her and the children was so close that CFS initially recommended guardianship to preserve it. She further asserts that she maintained regular visitation, the children were happy to see her at visits and came running to her, they called her “mommy” or “real mom,” and she believed that it “would have a negative impact on her children not to be able to see her again.”

Mother’s interactions with the children do not even begin to demonstrate that her relationships with them promoted the children’s well-being “to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) She has not proffered any evidence to support a finding that the children had a “substantial, positive emotional

attachment [with her] such that [they] would be greatly harmed” if the relationship was severed. (*Ibid.*) To the contrary, the record shows she had a hard time controlling them, and their behavior got worse when the visits increased to overnight. Because of these problems, the visits went back to being supervised. Even the supervised visits were described as ““disasters.”” The children were disrespectful of mother and behaviorally out of control. Moreover, the social worker recommended guardianship because the foster parents were unwilling to adopt the children initially, not simply because of mother’s alleged close bond with them. However, the recommendation changed when the foster parents said they were willing to adopt the children. The social worker opined that the children were in need of permanency.

Furthermore, in contrast to the children’s behavior during visits with mother, the record shows that they made “phenomenal progress” in the foster home, and had improved their behavior since being there. The foster parents had impressive parenting skills, and they loved the children very much. The children had been in the foster home two and a half years and were stable and comfortable there. The two older children told the court they felt good about being adopted. The younger children said they liked living with their foster parents.

Mother also relies upon two cases to argue that the beneficial parental bond exception applied—*In re Amber M.* (2002) 103 Cal.App.4th 681 (*Amber M.*) and *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*). Both cases are distinguishable. In *Amber M.*, the appellate court concluded that the juvenile court erred by declining to apply the beneficial parental relationship exception. However, it noted that the evidence showed

that the parental relationship *clearly outweighed* the benefit of adoption. (*Amber M.*, at p. 690.) The court noted that a psychologist who conducted a two-hour bonding study of the mother and the child concluded that they shared “a primary attachment” and that it could be detrimental to sever that relationship. (*Id.* at p. 689.) There was no comparable evidence in the instant case. The *Amber M.* court also noted that the case was heard in “10 different sessions over a period of months,” and that “[p]erhaps after the fragmented hearing process[,] the court lacked a clear concept whether or not the exception had been proved.” (*Id.* at p. 691.) In contrast, the instant case was heard in two sessions, which were three days apart. The court here thoroughly considered all of the evidence, and there is no indication that the court lacked a clear understanding of whether the exception had been proved.

In *S.B.*, *supra*, 164 Cal.App.4th 289, the appellate court concluded that the beneficial relationship exception applied since the evidence showed that the child would be “greatly harmed by the loss of her significant, positive relationship” with the father. (*Id.* at p. 301.) The evidence demonstrated the child’s strong attachment to the father. She was unhappy when visits ended and tried to leave with the father. (*Id.* at p. 298.) They shared an affectionate relationship, in that she would run into his arms, sit in his lap, whisper and joke with him, nestle up to his neck, tell him she missed him, and said she wished she lived with him. (*Ibid.*)

In contrast to *S.B.*, the evidence in the instant case did not show that the children “derived comfort, affection, love, stimulation and guidance from [their] continued relationship” with mother. (*S.B.*, *supra*, 164 Cal.App.4th at p. 300.) The record is clear

that the children loved mother, and she loved them, but their interactions were not positive. Mother's visits with them were "disasters." The children were very disrespectful of mother, and she had a difficult time controlling them. The more time they spent with her, the worse their behavior became. She watched horror movies with them and allowed them to have contact with unauthorized adults. Moreover, unlike the child in *S.B.*, the children never expressed that they wanted to live with mother. Rather, they all liked living with their foster parents. Although the children had a bond with mother, as the court acknowledged, it did not rise to the level that they would be greatly harmed by not seeing her again. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

We conclude that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), did not apply here.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST  
J.

We concur:

RAMIREZ  
P. J.

RICHLI  
J.